



U.S. Department of Justice

Civil Division

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October 28, 2010

Judge Freda L. Wolfson  
United States District Court  
District of New Jersey  
402 East State Street Room 2020  
Trenton, NJ 08608

SUBJECT: *Purpura et al. v. Sebelius et al.*, Case No. 3:10-cv-04814 (D.N.J.)

Dear Judge Wolfson:

Defendants respectfully submit this letter in response to plaintiffs' demand for reconsideration of this Court's denial of their proposed order to show cause. *See* Dkt. # 10.

Plaintiffs' "Reply Affidavit" contains nothing new. Plaintiffs declare that emergency injunctive relief is necessary because "the majority of the people in the United States oppose" the Patient Protection and Affordable Care Act. Reply Aff. at 2. They also insist that district court decisions in Florida and Virginia somehow require this Court to grant a temporary restraining order, apparently because those decisions somehow established the "*law of the case.*" *Id.* at 4 (emphasis in original). And they warn that the judiciary may have been "transformed into a Venezuela like Banana Republic." *Id.* at 7. But public opinion polls, even if they supported plaintiffs, do not show a need for emergency injunctive relief. Nor can incorrect and irrelevant statements about the law of the case doctrine, even when combined with empty warnings about banana republics, establish irreparable harm.

Indeed, even after three filings, whether plaintiffs themselves will be injured by or even subject to any provision of the ACA remains a mystery.

There is therefore no reason why this case, like others challenging the constitutionality of the ACA, cannot proceed on a normal briefing schedule.<sup>1</sup> Plaintiffs' request for reconsideration should be denied. *See McGarry v. Resolution Trust Corp.*, 909 F. Supp. 241, 244 (D.N.J. 1995) (a motion for reconsideration under L. Civ. R. 7.1(i) will be granted only when "dispositive factual matters or controlling decisions of law" were presented to the district court but not considered (internal citation and quotation marks omitted)).

Dated: October 28, 2010

Respectfully submitted,

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<sup>1</sup> This Court did not commit a "travesty of justice" nor disregard "proper judicial procedure" (Reply Aff. at 2) in denying the proposed order to show cause before plaintiffs submitted their "reply affidavit." Civil Local Rule 65 instructs a party seeking emergency relief to show by "affidavit or verified pleading of good and sufficient reasons why a procedure other than by notice of motion is necessary." The Rule does not entitle plaintiffs to a "reply affidavit."

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